

surface management agency determines that the species will not be adversely affected by all or certain stipulated methods of coal mining.

(3) *Exemptions.* This criterion does not apply to lands: To which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(k)(1) *Criterion Number 11.* A bald or golden eagle nest or site on Federal lands that is determined to be active and an appropriate buffer zone of land around the nest site shall be considered unsuitable. Consideration of availability of habitat for prey species and of terrain shall be included in the determination of buffer zones. Buffer zones shall be determined in consultation with the Fish and Wildlife Service.

(2) *Exceptions.* A lease may be issued if:

(i) It can be conditioned in such a way, either in manner or period of operation, that eagles will not be disturbed during breeding season; or

(ii) The surface management agency, with the concurrence of the Fish and Wildlife Service, determines that the golden eagle nest(s) will be moved.

(iii) Buffer zones may be decreased if the surface management agency determines that the active eagle nests will not be adversely affected.

(3) *Exemptions.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(l)(1) *Criterion Number 12.* Bald and golden eagle roost and concentration areas on Federal lands used during migration and wintering shall be considered unsuitable.

(2) *Exception.* A lease may be issued if the surface management agency determines that all or certain stipulated methods of coal mining can be conducted in such a way, and during such periods of time, to ensure that eagles shall not be adversely disturbed.

(3) *Exemptions.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(m)(1) *Criterion Number 13.* Federal lands containing a falcon (excluding kestrel) cliff nesting site with an active nest and a buffer zone of Federal land around the nest site shall be considered unsuitable. Consideration of availability of habitat for prey species and of terrain shall be included in the determination of buffer zones. Buffer zones shall be determined in consultation with the Fish and Wildlife Service.

(2) *Exception.* A lease may be issued where the surface management agency, after consultation with the Fish and Wildlife Service, determines that all or certain stipulated methods of coal mining will not adversely affect the falcon habitat during the periods when such habitat is used by the falcons.

(3) *Exemptions.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(n)(1) *Criterion Number 14.* Federal lands which are high priority habitat for migratory bird species of high Federal interest on a regional or national basis, as determined jointly by the surface management agency and the Fish and Wildlife Service, shall be considered unsuitable.

(2) *Exception.* A lease may be issued where the surface management agency, after consultation with the Fish and Wildlife Service, determines that all or certain stipulated methods of coal mining will not adversely affect the migratory bird habitat during the periods when such habitat is used by the species.

(3) *Exemption.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977;